

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BRENDAN DUNN, JACOB ERWIN, and
RYAN TOMPKINS,

Plaintiffs,

v.

MATTHEW HYRA, et al.,

Defendants.

NO. C08-0978 JLR

DECLARATION OF HEATHER L.
CARR IN SUPPORT OF
SUMMARY JUDGMENT MOTION

HEATHER L. CARR hereby states as follows:

1. I am one of the attorneys for the defendants in the above-captioned matter. I make this declaration on the basis of personal knowledge, and am competent to testify to the matters herein.

2. Attached to and referenced in this declaration are true and correct copies of documents generated or received and maintained by my office during the course of this litigation:

- a. Exhibit 1 is excerpts from the deposition of Officer Matthew Hyra.
- b. Exhibit 2 is excerpts from the deposition of Officer Steven Bale.
- c. Exhibit 3 is excerpts from the deposition of Plaintiff Jacob Erwin.

DECLARATION OF HEATHER L. CARR IN SUPPORT OF
SUMMARY JUDGMENT MOTION - 1

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3019-029774 425173

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PROFESSIONAL CORPORATION
601 Union Street, Suite 3100
Seattle WA 98101.1374
TEL 206.623.9900 FAX 206.624.6885

1 d. Exhibit 4 is excerpts from the deposition of Plaintiff Ryan Tompkins.

2 e. Exhibit 5 is excerpts from the deposition of Plaintiff Brendan Dunn. Note the
3 photograph attached to Dunn's deposition as deposition Exhibit 3 is a photograph of Plaintiff
4 Ryan Tompkins, taken by Betty Udeson for *The Seattle Times*, during his arrest by Seattle police
5 officers at Cal Anderson Park on October 5, 2006. The photograph is contained in the
6 "slideshow" presented with *The Seattle Times'* online article "Administration foes step out state-
7 wide", by Tan Vinh, on Friday, October 6, 2006, which is published at
8 http://seattletimes.nwsourc.com/html/localnews/2003291538_rally06m.html.

9 f. Exhibit 6 is a photograph of Plaintiff Jacob Erwin, taken by Gilbert W. Arias for
10 *The Seattle Post Intelligencer*, during Erwin's arrest by Seattle police officers at Cal Anderson
11 Park on October 5, 2006. The photograph is contained with *The Seattle Post Intelligencer's*
12 online article "Hundreds protest 'Bush Regime' – Daylong demonstration ends with 5 arrests",
13 by Mike Barber, on Friday, October 6, 2006, which is published at
14 http://seattlepi.nwsourc.com/local/287766_peacemarch06.html.

15 g. Exhibit 7 is excerpts from the deposition of Officer Richard Roberson.

16 h. Exhibit 8 is excerpts from the deposition of Officer John Skommesa.

17 i. Exhibit 9 has been removed from this declaration.

18 j. Exhibit 10 is excerpts from the criminal docket for Plaintiff Jacob Erwin.

19 k. Exhibit 11 is excerpts from the criminal docket for Plaintiff Ryan Tompkins.

20 l. Exhibit 12 is excerpts from the criminal docket for Plaintiff Brendan Dunn.

21 m. Exhibit 13 is excerpts from Dunn's answers to the City of Seattle's First Set of
22 Interrogatories and requests for Production to Plaintiff Brendan Dunn. Because Plaintiff did not
23 include the questions with his answers, also attached are the corresponding questions. Dunn's

DECLARATION OF HEATHER L. CARR IN SUPPORT OF
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1 answers are the same or substantially the same as those provided by Erwin and Tompkins.
2 Consequently, Defendants have not submitted those as well. If the Court requires the answers
3 from Erwin and Tompkins be submitted as well, Defendants will immediately do so upon
4 request.

5 n. Exhibit 14 is a print out of the King County Jail Booking Events for Jacob Erwin.

6 o. Exhibit 15 is Seattle Police Department Policies and Procedures, Section 2.049 –
7 Evidence, Private Property Collection & Release.

8 3. When Plaintiffs filed this lawsuit, they named John Does 1-250 as defendants.
9 *Dkt. 4 (Compl.)*. With their initial disclosures, Defendants submitted all documents relevant to
10 this lawsuit that were known to them at the time. Defendants also fully and timely answered all
11 written discovery propounded by any of the three plaintiffs. Defendants made available for
12 deposition any Seattle police officer who may have any knowledge concerning the events
13 underlying this lawsuit, but Plaintiffs only sought to depose four. Plaintiffs have never claimed
14 Defendants did not fully comply with discovery. *See generally Dkt.* The discovery deadline has
15 now closed. *Dkt. 26, 37*. In fact, Defendants waited for the deadline to pass before moving for
16 summary judgment specifically so that Plaintiffs could have all the opportunity allotted them to
17 conduct the discovery necessary to support their claims. The deadline for joining additional
18 parties has also closed. *Dkt. 26*. Nevertheless, Plaintiffs have not identified, joined, or served
19 the 250 John Doe defendants originally listed in their Complaint. *See generally Dkt.*

20 4. Based upon his testimony and the lack of documentary evidence suggesting
21 otherwise, it is apparent that prior to or during this lawsuit, Mr. Dunn did not follow the
22 protocols published by the City of Seattle as to how to obtain the return of property that was
23 taken into evidence. Consequently, he did not obtain his flag's return. No evidence, testimonial

1 or otherwise, suggests he was given the run around by the City or any of its employees. On July
2 17, 2009, the Court ordered the City to return the flag and flag pole to Mr. Dunn without
3 requiring him to follow the established protocols. Mr. Dunn's attorney claimed he was to obtain
4 the flag and flag pole on Mr. Dunn's behalf. The City timely provided it to Mr. Dunn's attorney
5 as ordered by the Court.

6 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF WASHINGTON
7 STATE AND THE UNITED STATES THAT THE FOREGOING IS TRUE AND CORRECT.

8 Executed this 31st day of August, 2009 at Seattle, Washington.

9
10 /s/ Heather Carr via ECF
Heather Carr

Certificate of Service

I certify that on the date noted below I electronically filed this document entitled DECLARATION OF HEATHER L. CARR IN SUPP. OF SUMM. J. MOT. with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following persons:

Lawrence A. Hildes,
lhildes@earthlink.net
Law Offices of Lawrence A. Hildes
PO Box 5405
Bellingham, WA 98227
Attorneys for Plaintiffs Dunn, Erwin and Tompkins

and I certify that I have caused to be served in the manner noted below a copy of the above-listed document to the following non CM/ECF participants:

N/A

DATED this 31st day of August, 2009, at Seattle, Washington.

/s/ Heather L. Carr via ECF